

BL-056**Distribution of Director Candidate Information**

September 11, 2008

To: Chairman, Board of Directors
Each Farm Credit Bank and Association

From: Leland A. Strom
Chairman and Chief Executive Officer

Subject: Distribution of Director Candidate Information

This booklet clarifies the meaning of “campaign material” for purposes of Farm Credit Administration (FCA) regulation § 611.320(e) by differentiating campaign material from educational material. The booklet explains that Farm Credit System (System) institutions may provide, to stockholders, supplemental material on director candidates without violating the prohibition on distributing campaign material when that material is educational in nature and all candidates have a fair and equal opportunity to provide educational material. With this guidance, the FCA is seeking to promote greater stockholder awareness and participation in the election of directors to the boards of banks and associations that are a part of the borrower-owned cooperative System.

Background

FCA regulation § 611.320(e) prohibits System institutions from distributing director candidate campaign material but allows institutions to provide voting stockholders with candidate biographies. In addition, System institutions are required to provide stockholders the disclosure information made by each candidate under FCA regulation § 620.21(d)(1) and (d)(5).¹ These rules are designed to ensure that System institutions remain impartial in administering director elections, while still providing voting stockholders with enough information to make informed choices when voting for director candidates. FCA regulation § 611.320 in particular was designed to keep System institutions free from even the appearance of endorsing or promoting a particular director candidate.

The FCA provided guidance on what might be considered campaign material in two Frequently Asked Questions (FAQs) issued for our governance rules.² Governance FAQ number 33 explained that a System institution may request additional candidate disclosure and biographical information on director candidates as long as it is requested from all candidates, serves a legitimate purpose, and is not campaign material. Governance FAQ number 34 explained that candidate personal statements or requests for votes would generally be considered campaign material, but information commonly found in résumés would likely be treated as biographical information.

In this booklet we are providing additional clarification and guidance for identifying what is and what is not “campaign material” under the meaning of § 611.320(e). We are providing this clarification to ensure the interpretation of “campaign material” does not limit the distribution of appropriate information on director candidates to stockholders. The larger geographic territories of some System institutions

make it unrealistic to expect stockholders to have meaningful knowledge of most director candidates without some supplemental information beyond the required disclosures. The large number of stockholders in many associations also makes it impractical or cost-prohibitive for candidates to mail or distribute information themselves.

We believe that an informed electorate facilitates good governance, but that objective must be balanced with maintaining System institutions' impartiality in director elections. All candidates must be treated by System institutions fairly and equally during the election process. Likewise, information provided to voting stockholders by the System institutions should facilitate making informed decisions. Therefore, System institutions may not distribute information to stockholders that would be considered campaign material.

Differentiating Educational Material from Campaign Material

Campaign material is information clearly intended to influence the voting decisions of stockholders, while educational material is designed to inform voting stockholders of the background, experience, and qualifications of each candidate.

Educational material is information provided by a candidate, in addition to the required disclosures under § 620.21(d)(1) and (d)(5), which does not directly promote the candidate or oppose another candidate. Educational material may describe a candidate, what he or she has done, and may include a candidate's education, background, positions held in other organizations, career accomplishments, civic and personal interests, and direct contact information. Educational material may also include the candidate's responses to questions developed by an institution when those questions are asked of all director candidates. A personal statement by the candidate that discusses his or her desire to serve as a board member or thoughts regarding the institution, would also be considered educational material, as long as the statement does not venture into the realm of campaigning.

Certain items clearly constitute campaigning, which institutions are prohibited from distributing, such as material expressly advocating the election or defeat of a candidate by using words like "vote for" or "vote against" or promising a specific benefit to voters if the candidate is elected. For example, material provided by a candidate promising to double patronage payments if he or she should win the elected office would be campaign material, while material indicating a candidate's support of a strong patronage program would be educational because it does not equate the election of the candidate to a specific result (i.e., more patronage).

Preserving Impartiality in Elections

Each System institution providing educational information to stockholders must take steps to preserve its impartiality and ensure the fair and equal treatment of all director candidates, including nominees from the floor. Those steps might include 1) developing a template for use by director candidates in submitting educational information to the institution to ensure the same set of questions is asked of all candidates; 2) establishing a word count or page limit for candidate submissions and/or responses to standardized questions; 3) providing candidate information in a neutral or unbiased sequence, such as alphabetically; and 4) naming all candidates. If a candidate fails to respond to the institution's request for educational information, the institution should either indicate that no response was received or restate the candidate's required disclosure. System institutions should also establish appropriate controls over making simple grammatical and syntactical corrections to candidates' educational material unless the institution's policy is to accept the educational material "as is." Whatever steps a System institution takes, the result must avoid the appearance that the institution is favoring or endorsing any particular candidate. All candidates,

including nominees from the floor, are to be given the same opportunity to provide educational information and are to be treated fairly and equally in the process of collecting and providing the information to stockholders.

We encourage System institutions to disclose that director candidate educational material was prepared and submitted by the candidate and that the information is for educational purposes only. Institutions may also want to state that, by regulation, the institution must remain impartial and can neither endorse nor oppose any candidate. After floor nominations have closed, institutions may post candidate educational material on their Web sites simultaneously with, or immediately after, distributing the material in paper form to the voting stockholders.

As before, director candidates may continue to mail or otherwise distribute their own campaign material at their own expense.

Updating Policies and Procedures on Impartiality in Elections

Each System institution is required by FCA regulation § 611.320(a) to have policies and procedures addressing the institution's impartiality in director elections. We expect each System institution that decides to provide educational material on director candidates to revise its policies and procedures to reflect the guidance provided in this booklet. Institutions, when modifying existing policies and procedures, must ensure that all candidates are treated fairly and without bias or favoritism, particularly in the manner in which educational material is collected and disseminated.

Information to address in revisions to policies and procedures would include 1) defining what candidate material the institution considers as educational; 2) describing the manner in which that information will be collected from candidates, processed by the institution, and distributed to voting stockholders; and 3) identifying the controls used to ensure the institution's impartiality is maintained throughout the process. The updated policies and procedures should be sufficient to ensure that the process results in no real or apparent preferential treatment of any candidates and presents no significant disadvantage to floor nominees.

The guidance in this booklet in no way lessens FCA's expectations regarding an institution's duty to remain impartial in director elections. As such, FCA will examine each institution's policies, procedures, and actual practices against the principles of fairness, equal access, and impartiality toward all candidates.

Please contact Andrew D. Jacob, CFA, Director, or Gary Van Meter, Deputy Director, Office of Regulatory Policy, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090, at (703) 883-4414, or by e-mail to jacoba@fca.gov or vanmeterg@fca.gov if you have any questions regarding this communication.

¹FCA regulation § 620.21(d)(6) requires that candidate disclosure information be provided to voting stockholders as part of the election process. Candidate disclosure statements, prepared by all director candidates, consist of the candidate's name, city and state of residence, 5-year business and employment history, a list of other business affiliations where the candidate serves on the board or in a position of authority, familial relationships with the institution, and adverse loan status, if any, for any institution loan held by the candidate.

²Available at www.fca.gov.

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 Each Farm Credit Bank and Association
 Federal Farm Credit Banks Funding Corporation